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In the Supreme Court of the United States

OCTOBER TERM, 1960

No. 1020 Misc.

FREDERICK C. LYNCH, PETITIONER

v.

WINFRED OVERHOLSER, SUPERINTENDENT, ST. ELIZABETHS HOSPITAL, WASHINGTON, D.C.

ON MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION TO THE GRANTING OF THE PETITION FOR A WRIT OF CERTIORARI

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. "A") is reported at 288 F. 2d 388. No opinion was written by the district court.

JURISDICTION

The judgment of the court of appeals was entered on January 26, 1961. The petition for a writ of certiorari was filed on April 17, 1961. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether a judge of the Municipal Court of the District of Columbia has jurisdiction, under Rule 9

of the Criminal Rules of that court, to refuse to accept a plea of guilty when the plea is made voluntarily with understanding of the nature of the charge.

2. Whether the trial judge abused his discretion by refusing to permit petitioner to substitute pleas of guilty for previously entered pleas of not guilty when it affirmatively appeared that there was grave doubt as to petitioner's sanity at the time of the commission of the offenses.

3. Whether Section 24–301(d) of the D.C. Code (Supp. VIII, 1960), which provides for the commitment of defendants acquitted solely on the ground of insanity, is restricted in its application to defendants who affirmatively plead the insanity defense.

4. Whether petitioner's acquittal by reason of insanity and his commitment under Section 24–301(d) of the D.C. Code, in the circumstances of this case, deprived petitioner of liberty without due process of law or of the effective assistance of counsel.

STATUTES AND RULE INVOLVED

The applicable statutes and rule involved are set out in the Appendix, *infra,* pp. 21–25.

STATEMENT

On November 6, 1959, two informations were filed in the Criminal Division of the Municipal Court of the District of Columbia, charging petitioner with violations of the bad check law, Section 22–1410 of the D.C. Code, App., *infra,* p. 21 (R. 22, 26). Pursuant to Section 24–301(a) of the D.C. Code, App., *infra,* pp. 22–23, the court ordered petitioner committed to

the District of Columbia General Hospital for a mental examination to determine his competency to stand trial (R. 22, 26; see R. 13). On December 4, 1959, the hospital, through its Assistant Chief Psychiatrist, reported that the psychiatric examination revealed petitioner "to be of unsound mind, unable to adequately understand the charges and incapable of assisting counsel in his own defense"[1] (R. 24). On December 28, 1959, the hospital, through the same psychiatrist, submitted a second report, which stated that petitioner had "shown some improvement and at this time appears able to understand the charges against him, and to assist counsel in his own defense" (R. 25). The psychiatrist went on to state that, in his opinion, petitioner "was suffering from a mental disease, i.e., a manic depressive psychosis, at the time of the crime charged. Such an illness would particularly affect his judgment in regard to financial matters, so that the crime charged would be a product of this mental disease." The psychiatrist stated further that petitioner appeared "to be in an early stage of recovery from manic depressive psychosis. It is thus possible that he may have further lapses of judgment in the near future. It would be advisable for him to have a period of further treatment in a psychiatric hospital" (R. 25).

[1] The report stated that petitioner had shown some improvement since his admission to the hospital, but recommended that petitioner "be committed to a psychiatric hospital for further care and treatment" (R. 24). Upon receipt of the report, the trial judge, under the provisions of Section 24–301(a), ordered that petitioner remain at the hospital for treatment (C.A.D.C., slip op., p. 2).

On the following day—December 29, 1959—petitioner, represented by counsel, was brought to trial (R. 13, 26). Petitioner then sought to withdraw a plea of not guilty which had been previously entered, and to plead guilty to the two informations (R. 13, 20). The trial judge, who had before him copies of the hospital reports of December 4 and December 28, both of which were attached to the informations (R. 26–28), refused to permit petitioner to change his pleas and proceeded to hear evidence on the charges (R. 13, 20). During the course of the ensuing trial, a psychiatrist representing the District of Columbia General Hospital Psychiatric Division testified, over petitioner's objection, that the crimes with which petitioner was charged were the products of mental illness (R. 13, 20).

At the conclusion of the case, the trial judge found petitioner not guilty by reason of insanity, and, pursuant to Section 24–301(d) of the D.C. Code, ordered him committed to St. Elizabeths Hospital (R. 9, 21, 22, 26).

On June 13, 1960, petitioner filed in the District Court for the District of Columbia a petition for a writ of habeas corpus, attacking the legality of his confinement on the grounds (1) that the Municipal Court's refusal to accept his pleas of guilty deprived him of liberty without due process of law; (2) that an "impossible burden" had been placed upon him to rebut the psychiatric evidence (of insanity) because the proof required for his commitment was evidence casting only the slightest reasonable doubt upon his sanity; (3) that his commitment violated

"the safeguards of the civil commitment law embodied in Title 21, D.C. Code, Section 306 *et seq.*"; (4) that his automatic commitment without a judicial finding of present dangerousness (i.e., dangerousness at the time of the trial) deprived him of liberty without due process of law, and (5) that Section 24–301 of the D.C. Code was "unconstitutional on its face and as construed and applied * * *" because it failed to provide for a judicial finding, on competent evidence, of mental illness and dangerousness at the time of the trial (R. 2–4). The petition also contained language which could be construed as alleging that Section 24–301(d) applies only to defendants who affirmatively raise the insanity defense (R. 4).

A hearing was held before the district court (McGarraghy, J.) on June 16, 1960 (R. 12). The court rejected petitioner's attack on the constitutionality of Section 24–301 (R. 15), but concluded (R. 19):

> I don't believe that the Municipal Court had a right to convert this proceeding into a civil commitment proceeding, which is what it did. Therefore, I don't think the Municipal Court had jurisdiction to commit him to St. Elizabeths. I will grant the writ.

Accordingly, on June 27, 1960, the court entered an order directing that petitioner be released unless civil commitment proceedings were instituted within ten days of the date of the order (R. 21).

On appeal, the Court of Appeals for the District of Columbia Circuit, sitting *en banc*, reversed, holding that the trial judge's refusal to permit petitioner to change his pleas was consistent with Rule 9 of the

Municipal Court Criminal Rules, *infra*, p. 25, and did not constitute an abuse of discretion.

In a dissenting opinion, Judge Fahy, with whom Judges Edgerton and Bazelon joined, did not reach the issue of the power of the Municipal Court to reject the guilty pleas, but thought that petitioner's commitment was invalid because the record did not show that he and his counsel were given a "reasonable opportunity" to cope with the testimony of the psychiatrist by showing that petitioner was not of unsound mind at the time of the offenses. The dissenting judges would also have affirmed on the ground that Congress, in imposing continued restraint under Section 24–301(e) upon one acquitted by reason of insanity until he is no longer "dangerous", was concerned only with persons (unlike petitioner) who engaged in unlawful conduct of a violent character.

ARGUMENT

The determination made below, concurred in by six judges of the court of appeals, was upon a matter of peculiarly local concern, involving the procedure followed by the Municipal Court under the special statutes and rules governing criminal insanity in the District of Columbia. As this Court stated in *Fisher* v. *United States*, 328 U.S. 463, 476:

> Matters relating to law enforcement in the District are entrusted to the courts of the District. Our policy is not to interfere with the local rules of law which they fashion, save in exceptional situations where egregious error has been committed.

In particular, this Court has for many years left to the Court of Appeals for the District and to Congress the formulation and overseeing of the rules controlling the insanity defense in the District of Columbia courts. There is no adequate reason to depart from that practice in the present case.

The underlying problem in this case arises out of the purported inversion of the roles of the prosecution and defense when a court rejects a guilty plea, or refuses to allow a previous plea of not guilty to be withdrawn, and receives evidence at the trial with respect to the defendant's mental state at the time of the offense. In the ordinary case, it is the defendant who invokes the insanity defense. The usual presumption of sanity is rebutted once the defendant introduces some evidence indicating that he suffered from a mental disease or defect at the time of the crime. Once sanity is in issue, the prosecution in the federal courts has the burden of proving beyond a reasonable doubt that the defendant was sane (*Davis* v. *United States*, 160 U.S. 469, 488) by establishing (in the District of Columbia) either that defendant had no mental disease or defect or that the crime was not the product of the mental illness (e.g., *Carter* v. *United States*, 252 F. 2d 608, 618 (C.A.D.C.); *Wright* v. *United States*, 250 F. 2d 4, 7 (C.A.D.C.)). If the defendant is found innocent by reason of insanity, he is then automatically committed to a mental hospital (D.C. Code, Section 24–301(d)), there to remain until it is adjudicated that he has "recovered his

sanity and will not in the reasonable future be dangerous to himself or others" (D.C. Code, Section 24–301(e)).

In the present case the information contained in the medical reports concerning petitioner's competency to stand trial constituted that modicum of evidence necessary to shift the burden to the government, in order to obtain a conviction, to prove his sanity beyond a reasonable doubt. Petitioner, however, desired to plead guilty and to be sentenced, and therefore asserted that he was sane at the time of the offense. The prosecution, on the other hand, reversing its usual role, did not seek a conviction but took the position that the accused was suffering from a mental disease, that the crime was a product of that disease, and that therefore defendant was insane at the time of the offense. Since the prosecution did not seek a conviction, it did not attempt to prove sanity; rather, petitioner had the burden to prove sanity beyond a reasonable doubt if he wished to avoid automatic commitment under the District of Columbia statute. Without any psychiatric witnesses testifying as to his sanity, the evidence of insanity presented in the medical reports and in the testimony of the psychiatrist who examined petitioner was sufficient to raise a reasonable doubt as to his sanity, and therefore he was found innocent by reason of insanity and automatically committed to St. Elizabeths. See, generally, Krash, *The Durham Rule and Judicial Administration of the Insanity Defense in the District of Columbia,* 70 Yale L.J. 905, 938–940 (1961).

Despite the fact that in the present case it was the prosecution which sought to establish petitioner's in-

nocence by reason of insanity and the defense which sought to establish guilt, we submit that no error, much less "egregious error", was committed by the court of appeals.

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1. Rule 9 of the Municipal Court Criminal Rules provides that "[t]he Court may refuse to accept a plea of guilty, and shall not accept the plea without first determining that the plea is made voluntarily with understanding of the nature of the charge. * * *" The court of appeals correctly held that, under Rule 9, the Municipal Court may, in its discretion, refuse to accept a guilty plea. Petitioner, on the other hand, incorrectly contends that under this rule the Municipal Court may refuse to accept a guilty plea only when it is in doubt as to whether "the plea is made voluntarily with understanding of the nature of the charge" (Pet. 23, 24).

Petitioner's construction does violence to the language of the rule by rendering superfluous the permissive clause, "[t]he Court may refuse to accept a plea of guilty." Under the mandatory clause, the court must refuse to accept a guilty plea which is not "made voluntarily and with understanding of the nature of the charge." Under the permissive clause, the court has general discretion to reject a guilty plea in the interests of justice. The rule is subject to no other reasonable interpretation.[2]

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[2] Rule 9 is an exact replica of Rule 11 of the Federal Rules of Criminal Procedure. In discussing Rule 11, the Advisory Committee on the Federal Rules stated in its *Second Prelimi-*

Since a trial judge has discretion under Rule 9 to refuse to accept a plea of guilty, *a fortiori* he may refuse to permit a defendant to withdraw a previously entered not-guilty plea. As the Court of Appeals for the District of Columbia Circuit declared in *Tomlinson* v. *United States*, 93 F. 2d 652, 654 (C.A.D.C.), certiorari denied, 303 U.S. 646, "An application by a defendant to change his plea [from not guilty to guilty] is addressed to the sound discretion of the court, and the action of the court will not be disturbed, unless there has been an abuse of that discretion."

2. The court of appeals properly held that the trial judge did not abuse his discretion in refusing to accept the guilty plea here. The courts are entitled to take cognizance of evidence of insanity from whichever side it is adduced. *Davis* v. *United States*, 160 U.S. 469, 487–488.[2] Confronted with an unequivo-

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nary Draft of the Federal Rules of Criminal Procedure 43 (1944):

"* * * That a defendant may plead guilty, and that the court *may refuse* or delay *acceptance of the plea*, is in accordance with the common law as followed in the federal courts. See *Hallinger* v. *Davis*, 146 U.S. 314, 318 (1892); *United States* v. *Trinder*, 1 F. Supp. 659 (D. Mont. 1932). See also 4 Blackstone, *Commentaries* (1769) * * 329, 332; and 1 Chitty, *Criminal Law* (5th Am. ed. 1847) * * 422, 434, 471." (Emphasis added.)

[2] This Court said in *Davis* that "[g]iving to the prosecution, where the defence is insanity, the benefit in the way of proof of the presumption in favor of sanity, the vital question from the time a plea of not guilty is entered until the return of the verdict, is whether upon all the evidence, *by whatever side adduced*, guilt is established beyond reasonable doubt" (160 U.S. at 487–488 (emphasis added)).

cal opinion in the hospital report of December 28 that petitioner was of unsound mind at the time of the offenses charged,[4] and that the offenses were the product of this mental illness, the trial court properly concluded that criminal punishment should not be imposed without further inquiry into the question whether petitioner was criminally responsible for his acts.

Acceptance of petitioner's guilty pleas would have resulted in the imposition of punishment notwithstanding clear evidence that petitioner was not responsible. A trial judge could properly conclude that to overlook such evidence would be to ignore the very basis of our criminal jurisprudence. Beyond that, he could reasonably decide that to accept the guilty pleas would have been to disregard "society's great interest" in securing the community against repetition of petitioner's anti-social conduct (*Williams* v. *United States*, 250 F. 2d 19, 26 (C.A.D.C.); *Winn* v. *United States*, 270 F. 2d 326, 327 (C.A.D.C.)) and in rehabilitating and restoring him to usefulness in the community (see C.A.D.C. slip op., p. 9; *Carter* v. *United States*, 283 F. 2d 200, 203 (C.A.D.C.)).[5] The

[4] Petitioner does not dispute that the examination to determine his competency to stand trial properly included an inquiry into his mental condition at the time the offenses were committed. See *Winn* v. *United States*, 270 F. 2d 326 (C.A.D.C.); *Calloway* v. *United States*, 270 F. 2d 334 (C.A.D.C.).

[5] Petitioner contends that "the sole justification for the automatic commitment law in case of an acquittal by reason of insanity is that the individual, who was not legally responsible for his criminal acts, will receive treatment and rehabilitation"

judge could also properly consider that the acceptance of the pleas of guilty would have branded with a criminal record one who, as the court of appeals noted, had never before been convicted of a criminal offense and had served honorably as a commissioned officer in the armed forces (C.A.D.C., slip op., p. 8). Under such circumstances, the trial judge plainly did not abuse his discretion in refusing to permit petitioner to withdraw his pleas of not guilty and to substitute guilty pleas.*

3. There is no warrant for petitioner's contention (Pet. 20) that Section 24–301(d), which requires the commitment of "any person tried upon an indictment or information for an offense" who "is acquitted solely on the ground that he was insane at the time of

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(Pet. 21), and complains that facilities at St. Elizabeths are inadequate for this purpose (Pet. 10–13, 21). Not only was this contention not made in the habeas corpus petition, but it is also without legal merit. The adequacy of the conditions at St. Elizabeths Hospital is not a proper subject for judicial notice, but rather, in a proper case, for expert and lay testimony. Petitioner also is mistaken in asserting that the "sole justification" for the automatic commitment law is that the defendant will receive treatment. An equal, if not primary, justification is that the public safety requires that a defendant acquitted by reason of insanity be hospitalized until reasonable assurance can be given that he will not be dangerous. H. Rep. No. 892, 84th Cong., 1st Sess., p. 3; S. Rep. No. 1170, 84th Cong., 1st Sess., p. 3; see *infra*, p. 13.

*Since an indication of insanity at the time of the offense is a "fair and just" reason (*Kercheval* v. *United States*, 274 U.S. 220, 224) for granting a defendant's motion for leave to withdraw a plea of guilty prior to imposition of sentence (*Gearhart* v. *United States*, 272 F. 2d 499 (C.A.D.C.), it follows that evidence of insanity is a "fair and just" reason for refusing to permit a plea of guilty.

its commission," applies only to defendants who affirmatively raise the insanity defense. The words of the statute neither expressly nor impliedly contain such a restriction. The committee reports on the bill which became Section 24-301, moreover, both state that the purpose of subsection (d) was to amend existing law so as "[t]o provide that in *every case* where an accused is found not guilty of a crime solely by reason of insanity he shall be confined in a hospital for the mentally ill. *This is designed to protect the public* against the immediate unconditional release of accused persons who have been found not responsible for a crime solely by reason of insanity." H. Rep. No. 892, 84th Cong., 1st Sess., p. 3; S. Rep. No. 1170, 84th Cong., 1st Sess., p. 3 (emphasis added). Similarly, in *Ragsdale* v. *Overholser*, 281 F. 2d 943, 947 (C.A. D.C.), the court of appeals stated that the mandatory commitment provision "has two purposes: (1) to protect the public and the subject; (2) to afford a place and a procedure to rehabilitate and restore the subject as to whom the standards of our society and the rules of law do not permit punishment or accountability." The statutory scheme would be ill served by creating an exception in the case of a defendant who does not plead insanity, but who nevertheless is not responsible for his offense.[1]

[1] Neither in his habeas corpus petition, nor in his petition for certiorari, does petitioner take the position—adopted by Judge Fahy in his dissent below—that Congress in Section 24-301(e) is not concerned with persons who have engaged in non-violent conduct. See *Overholser* v. *Russell*, 283 F. 2d 195 (C.A.D.C.), where this contention is rejected.

4. Finally, under the circumstances of the present case, there can be no constitutional objection to the trial proceedings or to Section 24–301.

a. Petitioner makes certain objections to the procedure allegedly followed in the trial court after that court refused to permit petitioner to substitute pleas of guilty for his pleas of not guilty. He alleges (Pet. 16) that the trial judge conducted a hearing "principally addressed to the question of whether petitioner should be committed to a mental institution" and "denied to petitioner the rudimentary rights associated with any official hearing aimed at the control of the activities of the citizen." These allegations were not made in the habeas corpus petition, however; nor is there any evidence in the record to support them.* Since there is a "strong presumption of constitutional regularity in state judicial proceedings" (*Darr* v. *Burford*, 339 U.S. 200, 218; see *Hawk* v. *Olson*, 326 U.S. 271, 279; *Walker* v. *Johnston*, 312 U.S. 275, 286), the court of appeals correctly held that it was bound by that presumption in the absence of a showing that the judgment was so defective as to be vulnerable to collateral attack (C.A.D.C., slip op., p. 11).

b. Petitioner also contends that he "lacked adequate opportunity to test or refute the psychiatric evidence presented against him" (Pet. 17). Again,

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*No reporter was present at the Municipal Court proceedings. It does not appear that petitioner, who had the right to request the court to use an official reporter (see Municipal Court Criminal Rule 36; Municipal Court Civil Rule 82(b)), ever made such a request.

he failed to make this allegation in the habeas corpus petition, and no evidence in the record supports the contention. Moreover, it is settled law that petitioner has no constitutional right to procure independent psychiatric testimony at public expense. See *Smith* v. *Baldi*, 344 U.S. 561, 568; *McGarty* v. *O'Brien*, 188 F. 2d 151, 155 (C.A. 1), certiorari denied, 341 U.S. 928.*

c. Petitioner's argument that the refusal of a trial judge to accept a plea of guilty tendered, upon the advice of his lawyer, by a defendant competent to stand trial is a denial of the effective assistance of counsel (Pet. 22) also does not bear scrutiny. It is not the court's refusal to permit the consummation of a lawyer's advice to forego an insanity defense, but the inadequacy of that advice itself, which gives rise to questions of ineffective assistance of counsel. Cf. *Smith* v. *Baldi*, *supra*, 344 U.S. at 566, 567; *Plummer* v. *United States*, 260 F. 2d 729 (C.A.D.C.); *Clark* v. *United States*, 259 F. 2d 184 (C.A.D.C.). See also *Tatum* v. *United States*, 190 F. 2d 612, 618 (C.A.D.C.). A court does not render a counsel's assistance ineffective by rejecting the proposition he tenders.

d. Petitioner further insists that he "lacked formal notice as to what he was called upon to defend him-

* In a habeas corpus proceeding to establish his eligibility for release, however, petitioner would be able to secure the expert testimony of members of the Commission on Mental Health. See *Curry* v. *Overholser*, 287 F. 2d 137, 140 (C.A. D.C.); *Overholser* v. *DeMarcos*, 149 F. 2d 23 (C.A.D.C.), certiorari denied, 325 U.S. 889; *DeMarcos* v. *Overholser*, 137 F. 2d 698 (C.A.D.C.), certiorari denied, 320 U.S. 786.

self against—viz, suspicion of insanity" (Pet. 17). But such a characterization of what transpired in the trial court is wholly inaccurate. Petitioner was charged not with insanity, but with cashing bad checks. Since evidence came to the attention of the court that the accused was of unsound mind at the time of the commission of the offenses, it was incumbent upon the court to resolve, not ignore, the issue of insanity, and to take testimony from whatever sources were available. Petitioner's argument supposes that the criminal trial in the Municipal Court was actually converted into a lunacy proceeding. But this overlooks the fact that a commitment under Section 24–301 is not comparable to a civil commitment under D.C. Code, Section 21–306, *et seq.* The commission of acts forbidden by law placed petitioner in an entirely different category from one who is the subject of a civil commitment proceeding. As the court stated in *Overholser* v. *Leach*, 257 F. 2d 667, 669 (C.A.D.C.), certiorari denied, 359 U.S. 1013:

> The test of this statute [Section 24–301] is not whether a particular individual, engaged in the ordinary pursuits of life, is committable to a mental institution under the law governing civil commitments. Cf. *Overholser* v. *Williams*, 1958, 102 U.S. App. D.C. 248, 252 F. 2d 629. Those laws do not apply here. This statute applies to an exceptional class of people—people who have committed acts forbidden by law, who have obtained verdicts of "not guilty by reason of insanity," and who have been committed to a mental institution pursuant to the Code [footnote omitted]. People in that cate-

> gory are treated by Congress in a different fashion from persons who have somewhat similar mental conditions, but who have not committed offenses or obtained verdicts of not guilty by reason of insanity at criminal trials. * * *

Certainly, Congress has the constitutional power, in prescribing procedures, to distinguish between ordinary lunacy proceedings and criminal proceedings in which the defense of insanity is raised.

e. Petitioner also maintains that Section 24–301 does not meet the standards of due process because it permits commitment without a judicial finding of present insanity (Pet. 19, 20), even though the trier of fact has only a reasonable doubt as to the defendant's sanity at the time of the offense (Pet. 17). But, as the court of appeals held in *Ragsdale* v. *Overholser*, *supra*, 281 F. 2d at 948, there is a "rational connection between the known evidence as to * * * [defendant's] mental disease and the statute's mandatory commitment provision."[10] The court there pointed out (*id.* at 948, 949) (1) that implicit in a verdict of not guilty by reason of insanity is the conclusion that the defendant committed the offense

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[10] Judge Fahy, concurring in *Ragsdale* (281 F. 2d at 950), agreed that "there is a rational relationship between mandatory commitment under section 24–301 and an acquittal by reason of insanity", and that "it is not undue process of law for society, in seeking a solution of the problem with which the legislation copes, to use such a provision as section 24–301, notwithstanding there is no finding of insanity, but only a doubt with respect to sanity, when section 24–301 comes into operation. See *Greenwood* v. *United States*, 350 U.S. 366 * * *."

charged,[11] and that there is a rational basis for the belief that he suffered from a mental disorder of which the offense was a product; (2) that a hearing immediately following the verdict to determine the defendant's then mental condition would be meaningless for lack of a reasonable opportunity for psychiatrists to subject him to observation and examination and to report their findings; (3) that it is not unreasonable to refuse to permit the defendant to remain at large while psychiatrists are attempting to determine whether he is dangerous, for a premature release could lead to the commission of new criminal acts; (4) that the defendant may judicially test the legality of his confinement by a habeas corpus proceeding at which he is free to demonstrate by evidence that he has recovered to the point where he will not be dangerous to himself or others (see *Greenwood* v. *United States*, 350 U.S. 366, 375);[12] and (5) that placing upon a defendant who has committed criminal acts the burden of establishing his eligibility for release violates no constitutional guarantee.

Furthermore, even if there might have been merit to petitioner's argument had there been conflicting evidence on the issue of insanity at the trial, the conduct of the present case did not constitute error, much less

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[11] Note the corresponding Scottish terminology "guilty but insane." *Report, Royal Commission on Capital Punishment*, 1949–1953 (Cmd. 8932), p. 157.

[12] See also *Tatem* v. *United States*, 275 F. 2d 894 (C.A.D.C.); *Lewis* v. *Overholser*, 274 F. 2d 592 (C.A.D.C.); *Overholser* v. *Leach*, 257 F. 2d 667 (C.A.D.C.), certiorari denied, 359 U.S. 1013; *Stewart* v. *Overholser*, 186 F. 2d 339 (C.A.D.C.).

"egregious error." The sole psychiatric testimony was to the effect that petitioner was mentally ill and that the crimes with which petitioner had been charged were the products of that mental illness (R. 13, 20). Thus, even if the automatic commitment law should apply only where the defendant is proven insane, that burden was carried in this case.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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JUNE 1961.

APPENDIX

Section 22–1410 of the D.C. Code (1951) provides:

Making, drawing, or uttering check, draft, or order with intent to defraud—Proof of intent—"Credit" defined.

Any person within the District of Columbia, who, with intent to defraud, shall make, draw, utter, or deliver any check, draft, or order for the payment of money upon any bank or other depository, knowing at the time of such making, drawing, uttering, or delivering that the maker or drawer has not sufficient funds in or credit with such bank or other depository for the payment of such check, draft, or order in full upon its presentation, shall be guilty of a misdemeanor and punishable by imprisonment for not more than one year, or be fined not more than $1,000, or both. As against the maker or drawer thereof the making, drawing, uttering or delivering by such maker or drawer of a check, draft, or order, payment of which is refused by the drawee because of insufficient funds of the maker or drawer in its possession or control, shall be prima facie evidence of the intent to defraud and of knowledge of insufficient funds in or credit with such bank or other depository, provided such maker or drawer shall not have paid the holder thereof the amount due thereon, together with the amount of protest fees, if any, within five days after receiving notice in person, or writing, that such draft or order has not been paid. The word "credit," as used herein, shall be construed to mean arrangement or understanding, express or implied, with the bank or other depository for the payment of such check, draft, or order.

Section 24–301 of the D.C. Code (Supp. VIII, 1960) provides:

Commitment of persons of unsound mind to the District of Columbia General Hospital—Certification to the Court—Acquittal by jury on grounds of insanity—Confinement in a mental institution—Conditions for release after confinement—Conditional release—Expenses—Writ of habeas corpus—Inconsistent provisions of Federal Statutes superseded.

(a) Whenever a person is arrested, indicted, charged by information, or is charged in the juvenile court of the District of Columbia, for or with an offense and, prior to the imposition of sentence or prior to the expiration of any period of probation, it shall appear to the court from the court's own observations, or from prima facie evidence submitted to the court, that the accused is of unsound mind or is mentally incompetent so as to be unable to understand the proceedings against him or properly to assist in his own defense, the court may order the accused committed to the District of Columbia General Hospital or other mental hospital designated by the court, for such reasonable period as the court may determine for examination and observation and for care and treatment if such is necessary by the psychiatric staff of said hospital. If, after such examination and observation, the superintendent of the hospital, in the case of a mental hospital, or the chief psychiatrist of the District of Columbia General Hospital, in the case of District of Columbia General Hospital, shall report that in his opinion the accused is of unsound mind or mentally incompetent, such report shall be sufficient to authorize the court to commit by order the accused to a hospital for the mentally ill unless the accused or the Government objects, in which event, the court, after hearing without a jury, shall make a

judicial determination of the competency of the accused to stand trial. If the court shall find the accused to be then of unsound mind or mentally incompetent to stand trial, the court shall order the accused confined to a hospital for the mentally ill.

(b) Whenever an accused person confined to a hospital for the mentally ill is restored to mental competency in the opinion of the superintendent of said hospital, the superintendent shall certify such fact to the clerk of the court in which the indictment, information, or charge against the accused is pending and such certification shall be sufficient to authorize the court to enter an order thereon adjudicating him to be competent to stand trial, unless the accused or the Government objects, in which event, the court, after hearing without a jury, shall make a judicial determination of the competency of the accused to stand trial.

(c) When any person tried upon an indictment or information for an offense, or tried in the juvenile court of the District of Columbia for an offense, is acquitted solely on the ground that he was insane at the time of its commission, that fact shall be set forth by the jury in their verdict.

(d) If any person tried upon an indictment or information for an offense, or tried in the juvenile court of the District of Columbia for an offense, is acquitted solely on the ground that he was insane at the time of its commission, the court shall order such person to be confined in a hospital for the mentally ill.

(e) Where any person has been confined in a hospital for the mentally ill pursuant to subsection (d) of this section, and the superintendent of such hospital certifies (1) that such person has recovered his sanity, (2) that, in the opinion of the superintendent, such person will not in the reasonable future be dangerous

to himself or others, and (3) in the opinion of the superintendent, the person is entitled to his unconditional release from the hospital, and such certificate is filed with the clerk of the court in which the person was tried, and a copy thereof served on the United States Attorney or the Corporation Counsel of the District of Columbia, whichever office prosecuted the accused, such certificate shall be sufficient to authorize the court to order the unconditional release of the person so confined from further hospitalization at the expiration of fifteen days from the time said certificate was filed and served as above; but the court in its discretion may, or upon objection of the United States or the District of Columbia shall, after due notice, hold a hearing at which evidence as to the mental condition of the person so confined may be submitted, including the testimony of one or more psychiatrists from said hospital. The court shall weigh the evidence and, if the court finds that such person has recovered his sanity and will not in the reasonable future be dangerous to himself or others, the court shall order such person unconditionally released from further confinement in said hospital. If the court does not so find, the court shall order such person returned to said hospital. Where, in the judgment of the superintendent of such hospital, a person confined under subsection (d) above is not in such condition as to warrant his unconditional release, but is in a condition to be conditionally released upon supervision, and such certificate is filed and served as above provided, such certificate shall be sufficient to authorize the court to order the release of such person under such conditions as the court shall see fit at the expiration of fifteen days from the time such certificate is filed and served pursuant to this section: *Provided,* That the provisions as to hearing prior to unconditional

release shall also apply to conditional releases, and, if, after a hearing and weighing the evidence, the court shall find that the condition of such person warrants his conditional release, the court shall order his release under such conditions as the court shall see fit, or, if the court does not so find, the court shall order such person returned to such hospital.

(f) When an accused person shall be acquitted solely on the ground of insanity and ordered confined in a hospital for the mentally ill, such person and his estate shall be charged with the expense of his support in such hospital.

(g) Nothing herein contained shall preclude a person confined under the authority of this section from establishing his eligibility for release under the provisions of this section by a writ of habeas corpus.

(h) The provisions of this section shall supersede in the District of Columbia the provisions of any Federal statutes or parts thereof inconsistent with this section.

Rule 9, Municipal Court Criminal Rules, provides:

Pleas.—A defendant may plead not guilty, guilty or, with the consent of the Court *nolo contendere*. The Court may refuse to accept a plea of guilty, and shall not accept the plea without first determining that the plea is made voluntarily with understanding of the nature of the charge. If a defendant refuses to plead or if the Court refuses to accept a plea of guilty, or if a defendant corporation fails to appear, the Court shall enter a plea of not guilty.

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